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SMALL BUSINESS ACT PROGRAMS

JULY 27, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 6013]

The Committee on Small Business, to whom was referred the bill (H.R. 6013) to amend the Small Business Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. Section 20(q) of the Small Business Act is amended as follows:

(1) by striking from paragraph (1) thereof "$15,000,000" and by inserting in lieu thereof "$20,000,000"; and

(2) by striking all of paragraph (3) thereof after the word "authorized" and by inserting in lieu thereof the following: "to make $41,000,000 in direct purchases of debentures and preferred securities and to make $250,000,000 in guarantees of debentures.".

SEC. 2. Section 404 of the Small Business Investment Act of 1958 is amended as follows:

(1) by striking from paragraph (1) of subsection (b) "may be issued" and by inserting in lieu thereof "shall be issued";

(2) by striking the period at the end of paragraph (1) of subsection (b) and by inserting in lieu thereof ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired."; and

(3) by striking from subsection (c) "exceed 3½ per centum" and by inserting in lieu thereof "be less than 1 per centum nor exceed 3½ per centum.".

SEC. 3. This Act does not authorize the appropriation of funds.

Amend the title so as to read:

A bill to amend the Small Business Act and the Small Business Investment Act of 1958.

THE PURPOSE OF THE BILL

The purpose of Committee's bill, H.R. 6013, is to increase three Small Business Administration program levels to amounts previously funded in the 1984 appropriations bill and to provide guaranteed financing

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for pollution control facilities. This increase will permit $5 million in additional loan assistance to handicapped, $6 million in additional direct assistance to Minority Enterprise Small Business Investment Companies, and $90 million in additional guarantees of Small Business Investment Companies' debentures.

Background

The Small Business Administration administers financial assistance programs, including direct loans to handicapped and organizations of handicapped, the purchase of debentures and preferred securities from Minority Enterprise Small Business Investment Companies (MESBICs) which specialize in providing financing to socially or economically disadvantaged firms, and guarantees of debentures issued by Small Business Investment Companies (SBICs).

(1) HANDICAPPED ASSISTANCE LOANS (HAL)

The Small Business Administration may make loans in two categories: loans to nonprofit organizations (HAL–1) and loans to small business concerns owned, or to be owned, by handicapped individuals (HAL–2).

HAL–1 financial assistance is available to public or private nonprofit sheltered workshops, or any similar organization which employs handicapped individuals for not less than 75 percent of the man-hours required, to enable them to produce and provide marketable goods and services. HAL–2 financial assistance is available for the establishment, acquisition, or operation of a small business concern 100 percent owned by handicapped persons.

(2) SMALL BUSINESS INVESTMENT COMPANIES (SBIC'S)

The SBA helps finance small firms through privately owned small business investment companies. SBIC's are SBA-licensed companies which supply equity capital and long-term loan financing to small firms for expansion, modernization, and sound financing of their operations. SBIC's must operate within SBA regulations but their transactions with small companies are private arrangements and have no connection with SBA.

SBIC's invest in practically all types of manufacturing and service industries, and in a wide variety of other types of businesses, including construction, retailing, and wholesaling. Many seek out small businesses offering new products or services because they believe these firms have unusual growth potential.

An SBIC finances small firms in two general ways—by straight loans and by venture capital or equity-type investments.

(3) MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES

Minority Enterprise Small Business Investment Companies (MESBIC's) are SBIC's which specialize in providing equity funds and long-term loans to small business concerns owned by socially or economically disadvantaged persons. MESBIC's are governed by the same regulations, with some modifications, providing a program that

is specially responsive to the needs of the disadvantaged business community.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

(4) POLLUTION CONTROL GUARANTEES THROUGH FEDERAL TAX-EXEMPT BOND FINANCING

The Small Business Administration, in cooperation with commercial banks and State agencies, helps small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities. SBA is authorized to issue an unqualified guarantee of 100 percent of the payments of rentals or other amounts due under qualified contracts with respect to the planning, design, financing, or installation of pollution control facilities.

NEED FOR THE LEGISLATION

(*a*) *Program levels*

As part of the Gramm-Latta reconciliation bill (P.L. 97–35) SBA program levels were set through fiscal year 1984. These included, for fiscal year 1984, handicapped direct loans of $15 million, MESBIC assistance of $35 million and SBIC assistance of $160 million. Subsequently, the Small Business Committee voted in H.R. 3020 to increase these programs to $20 million, $70 million and $250 million, respectively. The Senate Committee, in S. 1323, made identical increases for the handicapped and regular SBIC programs and increased the MESBIC level to $45 million. The 1984 appropriations bill (P.L. 98–166) appropriated sufficient funds, when added to the business loan and investment revolving fund, to permit handicapped direct loans of $20 million, MESBIC assistance of $41 million, and regular SBIC assistance of $250 million.

Although both the House and Senate passed authorization bills and appointed conferees on S. 1323, administration opposition to other provisions eliminated any resolution of the differences and thus the legislation died.

Prior thereto, at the beginning of fiscal year 1984, SBA obtained OMB permission to approve financial assistance in these categories at the higher levels cited in the conference report on the appropriations bill. Even after it became clear that the authorizations provided in the Small Business Act would not be increased, SBA ignored the Small Business Act program ceilings and continued to spend at the higher levels through the first 9 months of this fiscal year.

The Comptroller General subsequently issued opinion B–214172 on July 13, 1984 which concluded that ". . . the spending levels established in section 20(q) of the Small Business Act for the three loan programs . . . have not been superseded or repealed and remain in effect."

As a result of SBA's previously having spent at the higher level, during the balance of this fiscal year the handicapped program has

been shut down, the MESBIC program has been curtailed and the SBIC program has been greatly reduced.

(*b*) *Pollution control financing*

Congress recognized that small businesses, because of their generally limited credit history and the smaller size of their financing requirements, often are unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and nonproductive nature of required pollution control facilities are often more than small businesses can be expected to handle. Therefore, Congress authorized SBA, commercial banks and State authorities to make long-term low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guarantee of the small concern's obligation under a contract involving the facility.

Through this program, small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite Congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantee for tax-exempt.

The SBA Pollution Control Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses, thereby enabling them to comply with environmental requirements.

The restoration of the guarantees contemplated by the provisions of this legislation is more critical now than when those guarantees were authorized in 1976. The needs of small businesses and the communities in which they produce and serve for installing pollution abatement facilities and equipment and for disposing of wastes have continued, and the advent of a more targeted national focus on the control of toxic and hazardous wastes and substances since the original enactment of this program indicates that those needs may increase.

From the date the SBA prohibition was put into effect, only five of the original 100-plus applicants were able to proceed with some form of taxable financing guarantee. That reality has had no impact within the Administration in persuading it that its policy was wrong.

Unfortunately, the SBA and OMB have refused Congressional directives to heed that tax-exempt pollution contract guarantees are of vital importance to the survival of small businesses. It is important to note that in many instances the small concern's net worth is exceeded by the costs of these pollution control facilities. A business that does not have the assets to use as collateral for a taxable loan will have to close its doors or be in non-compliance with environmental mandates. These alternatives are unacceptable. Therefore, the Committee must

legislatively correct the misunderstanding of the purposes of the program.

In addition, the Committee notes that since its inception, this SBA Guarantee Program has been a revenue raiser through the fee SBA levies on businesses using the guarantee; it is self-sustaining and fosters economic activity throughout the country.

What the Bill Would Do

H.R. 6013 would increase three SBA program levels for 1984: the handicapped direct loan program level to $20 million and the regular SBIC level to $250 million, the amounts previously approved in separate legislation passed by both the House and the Senate, and the MESBIC program level to $41 million, which is less than the amount previously approved by both the House and Senate. Sufficient funds already have been appropriated to carry out these levels.

Also, the bill would prohibit SBA from denying applications for guarantees under the Pollution Control Contract Guarantees program solely because part of the proceeds for construction of the facilities are from tax exempt revenue bonds.

The bill expressly does not authorize any additional appropriations and none is contemplated.

Conclusion

The increases in program levels provided by this bill are non-controversial. They have already been funded by the 1984 appropriations bill which contains SBA monies. Without the bill, prospective recipients of this assistance, including handicapped individuals and organizations of handicapped, will be denied assistance until funds are released at the beginning of fiscal year 1985—and these are the same funds which could be released now by enactment of this bill.

Matters Required To Be Discussed Under House Rules

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report H.R. 6013:

A majority of the Committee voted in person and was actually present and the motion was approved by a recorded vote of 35 ayes and no nays.

In compliance with clause 2(l)(3) of the rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the Committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:

> In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee.* * *

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

Section 3(a)(2) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion exemption, or deduction, from gross income or which provide a special credit, a preferential tax of tax, or a deferral of tax liability.

None of the provisions of H.R. 6013 deals with taxation and thus, in your Committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitutes new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 6013 appropriates funds and thus, in your Committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivisions (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to H.R. 6013 has been requested but has not been received.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 6013.

In compliance with clause 2(l)(4), the Committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the Committee makes the following statement:

The costs attributable to this bill for the current fiscal year and for fiscal years 1985–89 are as follows: This bill expressly does not authorize the appropriation of funds. It merely (1) increases three program levels in fiscal year 1984 to permit SBA to provide financial assistance by utilizing funds previously appropriated and (2) prohibits SBA from denying guarantees on pollution control facilities due to the source of other financing involved in the project.

No cost estimate was submitted by any Government agency on H.R. 6013 to your Committee.

In your Committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

Section-by-Section Analysis

Section 1 amends section 20(q) of the Small Business Act by increasing the amount of three 1984 SBA program levels as follows:

1. Direct loans to handicapped are increased from the existing level of $15 million to $20 million;

2. Purchases of securities from Minority Enterprise Small Business Investment Companies are increased from the existing level of $35 million to $41 million; and

3. Guarantees of debentures of Small Business Investment Companies are increased from the existing level of $160 million to $250 million.

Section 2 amends section 404(b) of the Small Business Investment Act of 1958 by prohibiting SBA from denying guarantees on pollution control contracts solely because the project also includes financing from tax exempt revenue bonds.

It also amends section 404(c) of such Act by requiring SBA to charge a fee for the guarantee of not less than 1% of the amount guaranteed.

Section 3 expressly provides that this Act does not authorize the appropriation of funds.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Section 20 of the Small Business Act

Sec. 20. (a) * * *

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(q) The following program levels are authorized for fiscal year 1984:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make [$15,000,000] *$20,000,000* in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

(2) For the programs authorized by 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized [to make $35,000,000 in direct purchases of debentures and preferred securities and to make $160,000,000 in guarantees of debentures.] *to make $41,000,000 in direct purchases of debentures and preferred securities and to make $250,000,000 in guarantees of debentures.*

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SECTION 404 OF THE SMALL BUSINESS INVESTMENT ACT OF 1958

SEC. 404. POLLUTION CONTROL.—

(a) * * *

(b) The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property [may] *shall* be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income [tax.] , *and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.*

(2) Any such guarantee shall be for the full amount of payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount *be less than 1 per centum nor* exceed 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

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